8.0 CONSUMER PROTECTION ISSUES

8.1 Overview

Disasters are breeding grounds for deceptive trade and fraudulent consumer practices. In the aftermath of an event, uncertainty and immediacy put people at substantial risk of fraud. Disaster survivors such as seniors, individuals with disabilities, or those with limited English proficiency are particularly at risk of scams and bad actors. Additionally, the financial stress of a disaster can exacerbate financial instability and result in collections, creating further need for consumer legal assistance. Consumer education and information can help prevent victimization.

IMPORTANT NOTE: The information contained in this section is designed to help volunteer attorneys provide preliminary guidance to victims of consumer fraud or those with debtor/creditor problems in Texas.

Depending on the disaster survivor's situation, administrative complaints can be filed with agencies such as: the Consumer Finance Protection Bureau, the Federal Trade Commission, Department of Motor Vehicles, or the Texas Office of the Consumer Credit Commissioner. For issues with insurance companies or adjusters, including public adjusters, the Texas Department of Insurance takes complaints. Also, the Texas Attorney General has a civil complaint process as well as information about disaster scams.

8.2 Most Common Issues

- Deceptive Trade Practices / Door-to-Door Sales
- Debt Collection / Credit Reporting
- Price Gouging
- Certain Commodities During a Disaster
- Home Equity Fraud
- Home Remodeling and/or Repair / Mold Remediation Fraud (see FAQs)
- Identity Theft

8.3 Summary of Relevant Laws/Protections

A. *Texas Deceptive Trade Practices Act*

The Texas Deceptive Trade Practices Act (DTPA), Tex. Bus. & Com. Code § 17.41 *et seq*., protects consumers against false, misleading, or deceptive trade practices, including unconscionability and breach of warranty. The DTPA provides that a consumer who is damaged by such unlawful practices has a private right of action and may recover economic damages, injunctive relief, other equitable orders, and attorney's fees. If the illegal acts are committed knowingly or intentionally, the aggrieved consumer may obtain mental anguish and additional damages not to exceed three times the economic damages.

For further information on scams involving COVID-19 vaccines and tests, please visit the Office of the Attorney General and the Federal Trade Commission.

B. *Laws on Home Solicitation Contracts and "Buyer's Remorse"*

In Texas, chapter 601 of the Texas Business & Commerce Code regulates the home solicitation industry and applies to a consumer transaction in which (1) a merchant engages in a personal solicitation of a sale to a consumer at a place other than the merchant's place of business, or (2) a consumer agrees or offers to make a purchase at a place other than the merchant's place of business. Texas law requires specific language to be included in contracts and two copies of a separate notice of cancellation that has been filled out with the last date on which a buyer may cancel and the proper address for the cancellation to be sent. A buyer has the right to cancel a home solicitation contract until midnight of the third business day after the day on which the buyer signs the agreement.

If a seller fails to give a buyer two copies of the notice of the right to cancel the contract, the contract is void. The state door-to-door sales law does not apply to certain transactions, including an insurance sale regulated by the Texas Department of Insurance, sale of real property when (1) the purchaser is represented by a licensed attorney, (2) the transaction is negotiated by a licensed real estate broker, or (3) the transaction is negotiated at a place other than the consumer's residence by the person who owns the property.

For further information regarding door-to-door sales, please visit the Office of the Attorney General.

C. *FTC Cooling-Off Rule*

In addition to Texas state law, the Federal Trade Commission enforces federal requirements related to home solicitation sales pursuant to the Rule Concerning Cooling-Off Period for Sales Made at Homes or at Certain Other Locations, 16 C.F.R. pt. 429 (Cooling-Off Rule). The Cooling-Off Rule applies to sales at the buyer's home, workplace, or dormitory, or at facilities rented by the seller on a temporary or short-term basis, such as hotel or motel rooms, convention centers, fairgrounds, and restaurants. The Cooling-Off Rule applies even when a salesperson is invited to make a presentation in the home. Under the Cooling-Off Rule, the salesperson must tell the consumer about cancellation rights at the time of sale. The salesperson also must give the consumer two copies of a cancellation form (one to keep and one to send) and a copy of the contract or receipt. The contract or receipt should be dated, show the name and address of the seller, and explain the right to cancel. The contract or receipt must be in the same language used in the sales presentation. The Cooling-Off Rule does not cover sales that are made as part of a request for the seller to do repairs or maintenance on personal property (purchases made beyond the maintenance or repair request are covered) and sales of real estate.

For further information regarding the Cooling-Off Rule, please visit the Federal Trade Commission.

D. *Debtor/Creditor*

Disasters can often trigger financial crises as survivors fall behind on their bills. Missed or late payments can damage their credit ratings.

While taking stock of increased costs and decreased assets can be very stressful, disaster survivors should not avoid dealing with their financial situations. Attorneys working with disaster survivors need to be aware of the following:

1. Many people take great pride in paying off debt and having a good credit score. Despite the fact the disaster was unavoidable and the survivor is not at fault, they will feel embarrassment and reluctance to face their own circumstances.

2. Good credit is necessary for better interest on loans. People should not dip into retirement or take out home equity or personal loans for minimum payments to maintain their credit; credit dips down, but will return. Credit scores are mostly impacted by the most recent 36 months of information even though prior information stays on a credit report.

3. Some debts should be paid ahead of others. While seemingly obvious, this is something people under stress often do not do. Housing, whether rent or a mortgage, should be paid first. Car payments also need to be paid, although insurance may be even more necessary. While not always the case, both car loans and mortgages often have a bit of flexibility if a consumer is proactive and calls the lender. Any unsecured debts, such as credit cards, personal loans, and payday loans, should be paid last when a consumer is tight on funds.

Some creditors may agree to reduce, reschedule, or even postpone payments for certain periods of time. When a consumer cannot make a payment, they should contact their lender. However, a lender might threaten a disaster survivor with "collections" to influence financially unwise payments. In this scenario, any attorney giving advice should take care not to feed into a disaster survivor's fear of "bad credit" and missing payments. While credit has value, sometimes missed payments are unavoidable; credit should not be valued above immediate needs and common sense.

Foreclosure rescue and debt relief companies, often called "debt repayment plans," should be carefully researched and ideally avoided. Disaster survivors, often motivated to avoid bankruptcy and pay off debts, may be enticed to give their limited liquidity to these companies, rather than their actual creditors. While Texas and federal law impose requirements on these companies, filing bankruptcy or settling loans on their own is often more beneficial to the consumer than dealing with these companies and their high fees. The Texas attorney general's website has additional information on debt relief companies.

Credit reporting is governed by the federal Fair Credit Reporting Act, 15 U.S.C. § 1681 *et seq.*, which requires credit reporting agencies to furnish a free copy of a consumer's credit report on request within thirty days after the consumer is notified of an adverse action. Credit reporting agencies also have a statutory obligation to investigate consumers' disputes. Texas law governing credit reporting is found at Chapter 20 of the Texas Business & Commerce Code.

E. ***Debt Collection Protection***

The Texas Fair Debt Collection Practice Act (Chapter 392 of the Texas Finance Code) protects individuals from unfair debt collection practices, such as:

1. Threats of violence or other criminal acts
2. Using profane language
3. Falsely accusing the consumer of fraud or other crimes
4. Failing to identify who holds the debt
5. Using a false name or identification
6. Misrepresenting the amount of the debt or its judicial status

7. Filing suit on a debt that is past the four-year statute of limitations

For further information regarding unfair debt collection practices, please visit the Office of the Attorney General.

In addition, if the collector is not the original creditor, federal law—the Fair Debt Collection Practices Act—also has protections for a debtor. This includes a penalty for collecting a debt that is not owed.

F. *Collections after Judgments in Texas*

In general, Texas has no wage garnishment other than for child support and taxes. One exception arises when a consumer's paycheck comes from another state that allows garnishment, unfortunately something more common with direct deposit. The federal government can also garnish wages for defaulted student loans and other federal debts, including federal taxes and medical bills from military hospitals.

In general, Texas is not an easy place for creditors to collect assets, especially from consumers. For example, a collector, even after judgment, cannot take a consumer's

1. Homestead—home where consumer has lived over one year;
2. One vehicle per person of driving age in the home;
3. Personal possessions;
4. Tools of the trade.

However, bank accounts are vulnerable. Creditors with a judgment can use a Writ of Garnishment or a Receivership to take all the money from a consumer's bank accounts. Because of this, a consumer with a judgment against them should be wary of having money in the bank and may wish to consider bankruptcy or settling the judgment on their own terms to avoid having their bank account wiped clean.

Even with a judgment, a creditor cannot take a consumer's bank account funds if the money is from social security, social security disability, child support payments, unemployment, and several other forms of exempt funds. If a creditor has taken money from a bank account that should not have been eligible for garnishment, such as child support payments or money belonging to a third party when the debtor is only a signatory on the account, the debtor can file a form with the court and mail a copy to the creditor and bank stating why this money should not have been taken. A hearing should be set as soon as possible on this.

While hardly anyone wants to file bankruptcy, a bankruptcy discharge may be the absolute best solution for some consumers, particularly after being hit by a disaster. A bankruptcy can wipe out many debts; debts that have gone to judgment can be discharged as well. Many consumer bankruptcy attorneys offer a free initial consultation in which a consumer can determine whether or not they are a good candidate for bankruptcy. More information on this can be found at the National Association of Consumer Bankruptcy Attorneys.

For further information regarding debt collection and credit repair, please visit the Federal Trade Commission's page on credit.

G. *Fair Credit Billing Act*

Under the federal Fair Credit Billing Act (FCBA), 15 U.S.C. § 1666 *et seq*., if a consumer paid for a purchase with a credit card and a billing dispute arises about the purchase (*e.g.*, the merchandise shipped was not what was ordered), the consumer can notify the credit card company that they want to dispute the purchase. A sample dispute letter can be found at the following link, under the section titled "Exercise Your Rights." The dispute letter must be addressed to the credit card company at the address provided for "billing inquiries," which is typically specified on the billing statement. In addition, the letter must be received by the credit card company no later than sixty days after mailing the first bill containing the disputed amount. The credit card company must acknowledge the dispute in writing within thirty days after receiving the dispute letter, unless the problem has been resolved. The credit card company must resolve the dispute within two billing cycles (but not more than ninety days) after receiving written notice from the consumer. The consumer may withhold payment of the amount in dispute until the dispute is resolved, but the consumer is still required to pay any part of the bill that is not in dispute.

Note: Disputes about the quality of goods and services are not "billing errors," so the dispute procedure does not apply. However, if a consumer buys unsatisfactory goods or services with a credit card (or the sixty-day period for sending notice of a billing error has expired), a consumer may have other rights under the Act.

For further information about the FCBA, visit the Federal Trade Commission.

H. *Price Gouging*

Section 17.46(b)(27) of the Texas Business and Commerce Code makes it a deceptive trade practice to take advantage of a disaster by selling or leasing fuel, food, medicine, or another necessity at an exorbitant or excessive price or demanding exorbitant or excessive prices for these items. This statute can be enforced privately, by the attorney general, or by district and county attorneys.

The Texas Attorney General has advised that when an emergency has been declared by the governor, charging excessive prices for necessities can constitute price gouging. Examples of such necessities include toilet paper, sanitizer, and personal protective equipment. The Texas Attorney General encourages reporting of such price gouging here. For further information about price gouging, please visit the Office of the Attorney General.

I. *Home Equity Fraud*

Home equity is the market value of a home minus the mortgage and other liens on the home. For example, if a home's market value is $100,000 and the mortgage and all liens are $80,000, the equity is $20,000 ($100,000 - $80,000 = $20,000).

Home equity fraud is the taking of a homeowner's equity by fraudulent means. Victims of home equity fraud are most often elderly persons (particularly widows over age seventy), people with limited English skills, or homeowners with fixed incomes below $24,000.

There are numerous protections for consumers with home equity loans, most of which are in the Texas Constitution, Article 16 § 50(a), with important provisions at § 50(q).

In an area hit by a physical disaster, home equity fraud can be a way untrustworthy contractors attempt to get homeowners to pay them for work done. While a home equity loan is a legitimate and common way of getting funds for home repair, the money should not be paid out all at once, and especially not before work has commenced. In addition, there are generous cancellation rights with a home equity loan and a failure to provide notice of these rights can provide a remedy to victims of scams.

Another common statutory error made by scammers is to leave one or more homeowners off the loan. Everyone listed on the title to the home must be on the home equity loan. Failure to do this may be a sign of an unsavory lender, but it may also provide a way to help the victim fight fraudulent taking of equity.

For further information regarding Home Equity Fraud, please visit the Office of the Attorney General.

J. *Identity Theft*

The crime of identity theft includes obtaining, possessing, or using the identity of another individual—regardless of whether they are living or dead and regardless of their age (infant, minor, adult or elderly)—with the intent to harm or defraud someone. Most of the time when a person's credit has errors, it is either the credit reporting agency or a collector causing the error or it is a family member or friend who used their identity.

During a disaster, family members suffering from financial issues may move in together temporarily. This can sometimes contribute to identity theft or an identity mix-up. Papers with identifying information may be left in a damaged home or vehicle; a person's identity can be stolen with this information. Remember, regardless of what a debt collector or creditor tells a consumer, even when it is a stranger who stole someone's identity, proof of a crime is NOT necessary to get help in clearing one's name. It may be more expeditious for a consumer to file a police report, which could potentially convince a stubborn creditor they are sincere about the ID theft. However, those advising disaster survivors should remember some individuals have had negative experiences with law enforcement. A police report is not mandatory; common sense shows it is not proof of anything, it is simply the debtor telling an officer of the problem, and rarely is any investigation performed. It is false to tell an ID theft victim they must contact law enforcement—debt is a civil issue.

If an individual suspects their identity has been stolen, that individual should take the following steps:

1. Call or email the fraud departments of the companies, banks, or credit unions where accounts have been compromised. Explain someone stole your identity. While a freeze on an account may help, the best practice is to open new accounts. After calling, following up with a quick letter to each creditor is the best practice, and the consumer should keep a copy of these letters. That copy can be a scan or photo taken with their phone as long as the photo shows the complete, legible letter. Sending the notice via certified mail provides a receipt but may be cost prohibitive to some victims and is not mandatory.
2. Contact each of the three credit reporting agencies (Equifax, Experian, TransUnion) and ask that a free fraud alert be placed on their credit report. Individuals should also ask for a free credit report. Currently, all of the "Big Three" reporting agencies are providing free credit reports monthly to

consumers, so people should not pay money for these reports. Paying for a credit score is also unnecessary as this does not show what is reported.

3. Change the passwords, PIN s, and login information for all their potentially affected accounts, including their email accounts, and any accounts that use the same password, PIN, or login information. Do not forget money transfer apps like Venmo, Cash App, or PayPal!
4. Contact their police department, report the crime, and obtain a police report.
5. Go to the webpage of the Federal Trade Commission, report the ID theft and create an identity theft recovery plan.
6. Decide whether they want to place a security freeze on their credit report.
7. Review their credit report to correct any errors and identify any new accounts that were opened in their name, and then send a dispute letter to the credit reporting agencies such as Experian, Equifax and TransUnion. The business can be cc'd with the dispute letter, and it is good to include evidence if it exists (such as utility bills with a different address than that given in the false account) as well as a clear explanation. No specific legal language is required or even encouraged for a dispute letter, which should come directly from the affected individual.
8. Review their other credit card and bank statements and take action to remove or dispute unauthorized charges or debits.
9. If taxes are involved, the IRS website has specific guidance.
10. Consider other steps they may need to take to address specific problems such as reporting a misused Social Security number or clearing their name of criminal charges.

Under chapter 521 of the Texas Business and Commerce Code, a victim of identity theft has the option of seeking a court order declaring that they are a victim of identity theft. If an individual is granted this type of court order, they may submit it to private businesses and to governmental entities to help correct any records that contain inaccurate or false information which resulted from the identity theft. However, remember that this is not usually required and should not be the first step in an identity theft situation.

Abuse, including financial abuse, by domestic partners or family members also increases in times of stress, such as after a disaster.. Texas law is progressive in this area, and victims of financial abuse are not liable for coerced debt, which is defined as debt that was taken out in their name by force or coercion but can also include debts their abuser took out in their name without their knowledge. See Coerced Debt Toolkit: Addressing Identity Theft for Survivors of Financial Abuse.

For further information regarding identity theft, the federal website identitytheft.gov has information and forms.

K. ***COVID-19 and Public Health Emergency (PHE)***

1. COVID-19 scams: consumers should still remain aware of potential risks even though the PHE has ended.
    - IRS scams, in which perpetrators pretend to be IRS employees to glean financial information from the victim.
    - Puppy scams, in which perpetrators extract payment from victims for nonexistent pets.
    - Work-at-home scams, in which perpetrators extract financial information and payment from victims with the promise of a nonexistent work-at-home job.

- Gift card scams, in which various stories are told to vulnerable people to make them purchase gift cards and provide the gift card numbers to scammers, who then use the money for their own purposes.

Chapter 17 of the Texas Business and Commerce Code makes such scams illegal under state law.

The employment scams in particular have targeted consumers looking for safe ways to make money. People need to be wary of any job where they are told the employer is setting up the office in their city, and the consumer is sent checks to deposit. These are almost always scams—employers do not send cashier's checks to brand new employees to deposit, no matter the excuse. The scammers are cancelling the checks and consumers are left with negative accounts.

For further information regarding scams involving COVID-19, please visit the Office of the Attorney General and the Federal Trade Commission.

2. COVID-19 Debtor Protections-Mortgage Relief

The Coronavirus Aid, Relief, and Economic Security (CARES) Act, put in place protections for homeowners with federally backed mortgages that were struggling financially due to COVID-19. With the public health emergency ending in May 2023, these specific protections are now time-sensitive. For loans backed by the FHA, USDA, or VA, the deadline for requesting an initial forbearance was June 30, 2021. For loans backed by Fannie Mae or Freddie Mac, the deadline was February 28, 2021.

Forbearance and mortgage modifications can still be options in certain situations when financial hardships can be proven to prevent foreclosures. Talk to the lender to find out what is applicable in certain situations.

3. Student Loans during COVID

The CARES Act § 3513 provided relief for student loan borrowers with Direct Loans and also for FFEL loans, but only those FFEL loans currently owned by the U.S. Department of Education. Critically, not protected by the CARES Act are borrowers with Perkins Loans and borrowers whose FFEL loans are still held by banks or guaranty agencies. One estimate is that there are upward of nine million student loan borrowers not covered by the Act.

While student loan payments were suspended, the loans did not accrue any interest and the month of a suspended loan payment will be treated as if a loan had been made for purposes of loan forgiveness and loan rehabilitation. *See* CARES Act § 3513(b), (c). The suspension period should not result in negative credit reporting, and involuntary collection of the loan will be suspended—no wage garnishments, tax intercepts, offset of federal benefits, or any other collection activity. *See* CARES Act § 3513(d), (e).

The protections mentioned above do not extend to private student loans or to state student loans, such as Hinton-Hazelhurst.

8.4 Websites for Regulatory Agency Directives / Announcements

- Price gouging
- Consumer protection—home solicitation and buyer's remorse
- Fair credit billing
- Disaster scams
- Mortgage foreclosure "rescue"
- Debt collection
- Key contacts:

To report a complaint about any of the topics listed above, consumers should contact the Texas Attorney General at 1-800-621-0508 (consumer protection hotline), 1-800-252-8011 (general hotline), or website:
www.texasattorneygeneral.gov/cpd/file-a-consumer-complaint

Texas Attorney General: Consumer Division Website:
www.texasattorneygeneral.gov/cpd/consumer-protection
Consumer Protection Hotline: 1-800-621-0508
General Hotline: 1-800-252-8011

Office of the Attorney General
Phone: 1-512-463-2100
Fax: 1-512-475-2994
300 W. 15th Street
Austin, TX 78701

Better Business Bureau
BBB of Greater Houston and South Texas
Website: www.bbb.org/houston
E-mail: info@bbbhou.org
Phone: 1-713-868-9500
1333 W. Loop South, Suite 1200
Houston, TX 77027

BBB of Southeast Texas
Website: www.bbb.org/southeast-texas
E-mail: info@bbbsetexas.org
Phone: 1-409-835-5348
Fax: 1-409-838-6858
550 Fannin Street, Suite 100
Beaumont, TX 77701-2011

8.5 FAQs

Q. 8-1 What can I do to protect myself from unscrupulous contractors?

Before contracting for any services, the consumer should do the following:

- **Verify licensing**, if applicable, with appropriate regulatory agencies. Keep in mind that general contractors for residences are not state licensed, although they may be licensed by your local government, such as El Paso and Laredo;
- **Verify company legitimacy** with local Better Business Bureaus and online reviews;
- **Obtain comparison bids** with lists of services provided and material costs;
- Obtain all **estimates in writing**;
- Speak with other customers to **verify satisfaction**;
- **Read all contracts** or service agreements **before signing**;
- **Get all amendments to contracts put in writing and signed by both parties;** and
- **File complaints** with appropriate regulatory agencies if confronted with potential fraud or abuse.

Perhaps most importantly, consumers should **take their time** with decision making, which can feel impossible after a disaster. However, a contractor pushing a homeowner to sign immediately is suspect, and a consumer should feel free to get at least two estimates and to take time to consider options.

The telephone number for the Texas Office of the Attorney General's Consumer Protection Hotline is 1-800-621-0508 and general hotline is 1-800-252-8011. Urge consumers to contact the attorney general if someone calls with what the consumer feels is a scam—an early alert can prevent others from fraud. Urge them to contact consumer reporters of local media outlets to notify them of scams. Local television affiliates' contact information are available at ABC or FOX.

Tex. Bus. & Com. Code § 58.001 *et seq.*, regulates the actions of disaster remediation contractors who do not maintain offices within a county or adjacent county where a natural disaster occurred. Unless a disaster remediation contractor has an established office in the county or adjacent county where a property is located for at least one year prior to the contract, a disaster remediation contractor cannot require full or partial payment before beginning work and can only require partial payment reasonably proportionate to work performed.

For further information about home remodeling and selecting a contractor, please visit the Office of the Attorney General.

Q. 8-2 Should I enter into a lien contract to pay for home repairs?

After a disaster, a homeowner frequently needs major repairs for serious damage. These repairs may include roofing and siding, plumbing, electrical wiring, heating and cooling, replacement of damaged structures, interior living quarters, etc. The cost of these repairs is most likely greater than the insurance coverage and the ability of the homeowner to cover the cost. Sometimes, deferred maintenance can make the need to repair disaster-related damage harder to address, and the homeowner may feel trapped between the high cost of the repairs and the limited funding for repairs. Unscrupulous contractors or salespeople will take advantage of the fears of the homeowner and agree to make the repairs at unrealistic prices or via financing schemes.

The salesperson or contractor then induces the homeowner to sign a lien-contract secured by the home. The loan repayment amounts are higher than what the consumer can afford to pay on a fixed income. Alternatively, the contractor provides inadequate repairs or services and the consumer refuses to pay the note to the finance company.

The consumer should be fully aware that the lien-contract functions like a promissory note. If the homeowner misses only one payment, the creditor may foreclose and sell the home without ever going to court. The most common result is that the homeowner not only fails to have necessary repair work done, but also loses their home through foreclosure.

Q. 8-3 Should I consider refinancing my home to pay for home repairs or other expenses?

Refinancing might be an option for some, but advise clients to do their due diligence on terms, obligations and consequences. Because of the increased costs of confronting an emergency, consumers frequently fall behind in their credit payments or overextend themselves to the point that they must choose whether to pay creditors or obtain basic necessities such as food. Such consumers are often approached by finance companies promising to consolidate the homeowner's debt for existing mortgage, credit card debt, car loans, and repair loans. These companies then pressure the homeowner to sign multiple agreements without providing the homeowner sufficient time to review them or consult with anyone.

The negative outcomes of such refinancing schemes include high processing fees, payments to bogus/phantom creditors, and default on the loan. The homeowner often cannot pay both the refinancing costs and basic living expenses, resulting in a situation far worse than before the refinancing.

Lower income and minority borrowers, as well as elderly homeowners, are often targeted by predatory lenders. They encourage borrowers to lie about their income in order to get a loan, knowingly lend the borrower more money than they can repay, charge unnecessary fees, pressure borrowers into high-risk loans and use high pressure tactics to sell home improvements, and then finance them at higher interest rates. These predators pounce on desperate situations. A few tips for consumers include:

- Beware of lenders who claim that they are the only hope for a loan or ask borrowers to sign a contract/loan agreement with missing information.
- Beware when lenders say refinancing your home can solve credit or money problems.
- Always interview several contractors and lenders. Check with friends or family for recommendations.
- Research lenders, contractors, appraisers, etc., with the attorney general's office or the Better Business Bureau and review their complaint history.
- Never make false statements on a loan application. Any lender who encourages this is fraudulent and possibly criminal.
- Do not let anyone convince you to borrow more money than you can afford.
  Attend homeownership education courses. They are available through the U.S. Department of Housing and Urban Development (HUD) or counseling agencies. You can find a list of HUD-approved housing counselors for Texas here.

Q. 8-4 Can I trust my family member or close friend to help me with expenses?

Isolated homeowners who need assistance to maintain their homes frequently are victimized by friends, relatives, or caretakers. They assist the homeowner with household chores, including shopping or taking them on medical visits. Children of elderly parents sometimes seek control of their parents' property, via power of attorney or guardianship, for their own uses. Often, these persons use scare tactics to convince the elderly, disabled, or limited English or non-English speaking homeowner to transfer title of the property to them or convey authority to make such decisions. Unbeknownst to the homeowner, the power of attorney holder or guardian may convey or encumber the property and keep the proceeds for themselves.

If a power of attorney is needed, consider a limited power of attorney, whereby the agent has no authority to make any contracts regarding the home. Also, homeowners should remember that giving someone else a power of attorney does not mean they cannot still sign (or cancel) contracts in their own name.

Q. 8-5 What do I need to know about foreclosure consultants?

Some financial predators prey on homeowners during the foreclosure process. They claim to be experts who can assist homeowners after they receive a notice of default. In Texas, once the finance company files a formal lien with the county clerk, the homeowner is deluged by these foreclosure consultants. These financial thieves further encumber the property with liens for fees and extravagant charges. They try to obtain title through a power of attorney or by direct transfer. They take advantage of the homeowner's distress and offer to purchase the home for below market value through misrepresentations on the value of the home and on encumbrances. They represent to the homeowners that they may stay in the property for the rest of their lives. In fact, after they obtain the property, they sell it and the new owner serves the tenants with eviction papers. Clients should be warned of such scams. Consumers should also be advised of the tips outlined above as ways to guard against fraudulent lenders.

HUD offers foreclosure counselors for free on their website via The Making Home Affordable Program (HAMP). All the information needed to begin the process is located at Making Home Affordable. To speak with a housing counselor now, call 1-888-995-HOPE (4673).

If anybody attempts to charge a consumer money for a modification, the odds are that the consumer is dealing with somebody who is trying to scam them.

Q. 8-6 How do I decide which bills to pay first?

Before deciding which bills to pay and which to ignore, consumers need to know the consequences. The types of debts listed below could have immediate, harmful consequences if unpaid:

- **Court-ordered payments**, such as alimony or child support, must be paid on time or jail time could be sought for contempt of court. If clients are unable to pay, do not simply ignore it. Ask the court to modify the payment order. A court will usually lower or eliminate your payments to meet your new financial condition. Additionally, if a client is on SSD, their children should be eligible for "dependents' benefits," which may cover the client's support obligations in their entirety. Check with the client's local Social Security office.

- **Ongoing services**, such as utilities, telephone service, or health insurance coverage, must be paid or consumers will lose service or coverage. Sometimes financial hardships will create opportunities for eligibility in supplemental programs that can help with costs. For example: TDHCA Comprehensive Energy Assistance Program (CEAP) might be able to help with energy costs. If in need, ask your provider if any options exist.

- **Items purchased on credit or pledged as security on a loan** can usually be taken if payments cannot be made. However, a lender is unlikely to seek the return of any property unless a borrower misses several payments and is uncooperative. If the consumer needs extra time to make payments, they should contact the lender in advance.

Generally speaking, a consumer should pay their bills in the order of priority: home mortgage/rent, food/utilities/court ordered payments, and then everything else. Your credit card bill is the last bill that you pay, and you only pay it if you have paid for your necessities in full.

Q. 8-7 What should I do if I find myself unable to pay all of my bills?

If the debtor can afford to make small monthly payments, they should contact the collector to ask if the payments are acceptable and reach an agreement on all of the following:

- Total amount owed on a bill, including the interest to be added each year;
- Amount of monthly payments;
- Due dates that payments must reach the collector; and
- Address where payments must be mailed.

It is important for debtors to keep a record of phone calls from the collector regarding the past due bill, including the full names of the individuals they speak with and date, time, and details about the conversations. If the debtor arranges a payment agreement, they should send a brief letter confirming the terms of the payment plan. The debtor should always keep copies of any letters and payments sent to the collector. Letters to the collector should be sent via certified mail. Consumer Credit Counseling Services may negotiate with collectors on behalf of debtors for little or no fee. To locate a credit counselor, visit the Federal Trade Commission.

Be careful about signing renewal and/or refinancing agreements with creditors, as you may be waiving rights that you may have against the creditor. Also, generally speaking, if you sign an agreement with a creditor for payment, you will have re-started the statute of limitations with regard to that debt.

Q. 8-8 What do I do if I have no ability to pay my creditors?

Some debtors who have no employment income or prospects for such income might be considered "judgment proof." Such people own no real estate, no personal property of significant value, no more than one car, and would probably not have bank accounts or other investments. Such debtors who are unable to arrange a workable payment plan should consider sending the collector a letter informing them of the inability to pay and requesting that the collector stop contacting the debtor about the debt. The debtor should include in the letter any special circumstances which help explain the inability to pay. Sending such a letter limits the collector's right to contact the debtor.

Bankruptcy may be the best option for some disaster survivors who cannot satisfy their creditors. Filing bankruptcy will not necessarily cancel all debts. It is recommended that individuals wishing to pursue bankruptcy proceedings be referred to a State Bar-certified lawyer referral service where an experienced bankruptcy attorney can be identified. For information about lawyer referral call the State Bar of Texas at 1-800-252-9690 or visit the State Bar's website and click "Find a Lawyer," then "Contact the *Lawyer Referral & Information Service"*.

Q. 8-9 What happens when debtors fail to pay?

Debtors are not criminally liable for owing debts. However, a creditor may file a civil lawsuit to collect the debt, and a court judgment will give them the right to collect any nonexempt assets. Also, the creditor has the right to report the unpaid debt to a credit reporting agency.

Auto loan contracts usually permit the creditor to repossess a car without advance notice after a borrower's failure to make payments or if the borrower fails to keep the vehicle insured. The debtor will have to pay the full balance of the loan plus all costs of repossession in order to regain possession. If the debtor cannot pay, the creditor may sell the car and may sue the debtor for the amount the debtor owes over the sale price.

If a past due bill is for services a debtor continues to receive (e.g., utilities), the creditor may discontinue service or withhold reconnection, even if the debtor moves to another residence. The creditor may also sue to try to collect the unpaid balance.

Under federal and state laws, certain types of income and property are exempt from collection, regardless of how much is owed and regardless of whether or not there is a bankruptcy. The most important of these are the following:

- In Texas, a person's homestead is protected from most collections;
- Social Security payments, annuity income (this should cover private disability insurance payments), pension income, worker's compensation and unemployment compensation (there are some exceptions for child support, alimony, and taxes);
- The proceeds and avails from a life insurance policy;
- Necessary household appliances and furnishings;
- Necessary personal items and clothing;
- Necessary medical equipment;
- If working, any tools needed for the job;
- A two-wheeled, three-wheeled, or four-wheeled motor vehicle for each member of a family or single adult who holds a driver's license or who does not hold a driver's license but who relies on another person to operate the vehicle for the benefit of the non-licensed person;
- Farming or ranching vehicles and implements;
- Personal property for a family that has an aggregate fair market value of not more than $100,000, exclusive of any liens, security interests, or other charges encumbering the property; or
- Personal property owned by a single adult and has an aggregate fair market value of not more than $50,000, exclusive of any liens, security interests, or other charges encumbering the property.

If all property and income is exempt, then the debtor should notify creditors.